

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAYMOND BRADLEY,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 02-423
)	
DR. BALTA, PHILIP L. JOHNSON,)	
WILLIAM S. STICKMAN, JOAN)	Judge McVerry/
DELIE, C/O BERRY, TIMOTHY)	Magistrate Judge Hay
COLINS, THOMAS BANDY, KAREN)	
DANNER, C/O JOHNSON, GRANT)	
LATIMORE, DIANE MANSON, C/O)	
RAY, C/O RUSSELL, EDWARD)	
SWIERZCEWSKI, RICHARD WHITE)	
and STEPHANIE WOOD,)	
)	
Defendants.)	RE: Doc. 151

REPORT AND RECOMMENDATION

RECOMMENDATION

It is respectfully submitted that the Motion to Dismiss the action as against Andrew S. Balta, D.M.D., should be DENIED.

REPORT

Plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983 against the above-noted defendants alleging that he did not receive adequate dental care and pain medication for impacted wisdom teeth while incarcerated at SCI-Pittsburgh. Plaintiff has included state law claims as well. Plaintiff specifically alleges, inter alia, that Dr. Andrew Balta was deliberately indifferent to Plaintiff's serious dental needs.

On August 19, 2005, counsel for Dr. Balta filed a Suggestion of Death upon the Record pursuant to Fed.R.Civ.P.

25(a)(1), indicating that Dr. Balta died on August 14, 2005, during the pendency of this action.

Thereafter, on September 23, 2005, counsel for Dr. Balta moved to dismiss the action against him by reason of his death. Doc. 151. Plaintiff filed a response in opposition, as did defendants Stephanie Wood and Edward Swierczewski.¹ Thus, the matter is ripe for decision.

State law governs the survival of federal civil rights claims, including those based on 42 U.S.C. § 1983. See 42 U.S.C. § 1988; see also Robertson v. Wegman, 436 U.S. 584 (1978) (finding that state law should govern the survival of a Section 1983 claim because there is no applicable federal survival provision). The court must turn, then, to Pennsylvania law to determine whether all of Plaintiff's claims, both federal and state, survive the death of Dr. Balta. Under Pennsylvania law, "[a]ll causes of action or proceedings, real or personal, shall survive the death of the plaintiff or of the defendant, or the death of one or more joint plaintiffs or defendants." 42 Pa.C.S.A. § 8302. Inasmuch as Plaintiff brought suit against Dr. Balta in his individual capacity, see Third Amended Complaint (doc. 101), Pennsylvania law gives Plaintiff the right to pursue his claim against Dr. Balta's estate. Id. Accordingly, the motion to dismiss should be denied.

¹ Plaintiff also moved for substitution of Dr. Balta's legal representative for Dr. Balta, which is being addressed separately.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) & (C), and Local Rule 72.1.4 B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of the objections to respond thereto. Failure to timely file objections may constitute a waiver of any appellate rights.

Respectfully submitted,

/s/ Amy Reynolds Hay
AMY REYNOLDS HAY
United States Magistrate Judge

Dated: 10 November, 2005

cc: Hon. Terrence F. McVerry
United States District Judge

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